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Interim report of the Independent Expert on the promotion of a democratic and equitable international order, Alfred Maurice de Zayas

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the interim report of the independent expert on the promotion of a democratic and equitable international order, Alfred Maurice de Zayas, submitted in accordance with Human Rights Council resolution 18/6 and General Assembly resolution 66/159.

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Interim report of the Independent Expert on the promotion of a democratic and equitable international order, Alfred Maurice de Zayas

Summary

In his first report to the General Assembly, the Independent Expert formulates preliminary views on the conceptual and legal framework of the mandate and highlights some of the epistemological challenges inherent in the notion of democracy at the domestic and international levels, as well as the implications of a culture of equity based on common sense and common interest. This report is inspired by the purposes and principles of the United Nations as proclaimed in the Charter and in pertinent United Nations and regional human rights norms, including the core human rights treaties and multiple declarations and resolutions adopted by the General Assembly. The Independent Expert will cooperate with other special procedures of the Human Rights Council and endeavour to coordinate his work with that of other United Nations bodies, including the specialized committees and commissions of the General Assembly and the Security Council, the Advisory Committee of the Human Rights Council and the United Nations human rights treaty bodies. He will undertake to liaise with the World Trade Organization, the World Bank, the International Monetary Fund, the International Labour Organization, the World Health Organization, the World Intellectual Property Organization, the United Nations Conference on Trade and Development, the United Nations Educational, Scientific and Cultural Organization and the Office of the United Nations High Commissioner for Refugees. He has sent questionnaires to and is conducting consultations with stakeholders and academics in all regions of the world.

The Independent Expert will submit his preliminary report to the Human Rights Council at its twentieth session, in September 2012. The present report focuses more on the policy-making mandate of the General Assembly and addresses a number of real and potential obstacles to the realization of a democratic and equitable international order, endeavouring to identify some good practices and lessons learned, both at the international and domestic levels. Bearing in mind that certain world events have called into question the authority of the United Nations, it is important for the Assembly to reassert its role as the pre-eminent world forum and to ensure that the Charter is respected as a world constitution. Recalling that the preamble to the Charter of the United Nations begins with the words "We the people", greater voice should be given to civil society, and world public opinion should be measured more objectively, and listened to, so as to ensure that the needs of peoples are not supplanted by economic and geopolitical interests.

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I. Mandate and methodology

A. Human Rights Council resolution 18/6

1. In its resolution 18/6, the Human Rights Council established, for a period of three years, a special procedure entitled "Independent Expert on the promotion of a democratic and equitable international order".

2. In paragraph 17 of the resolution, the Council requested the Independent Expert to present his first report to the Council at its twenty-first session, in September 2012. Bearing in mind that the Independent Expert assumed his functions on 1 May 2012, this interim report, submitted in accordance with General Assembly resolution 66/159, should be understood as a *tour d'horizon* of the multiple aspects of the resolution. While the mandate may appear overbroad or abstract, the intention of the Council is to give practical application to human rights norms in the international order, thus requiring the Independent Expert to formulate pragmatic solutions. The individual and collective dimensions of the resolution will be taken into account, recognizing the individual's entitlement to civil, political, economic, social and cultural rights and the inter-State commitment to respect each State's sovereignty, ensuring equitable participation by all States in the international order, including global decision-making and equitable commercial and financial relations.

3. The mandate calls for the identification of obstacles and best practices and for the formulation of proposals and recommendations on possible action. While norms and mechanisms exist, an important implementation gap prevails. The mandate holder is consulting stakeholders and is cooperating with other mandate holders. One task is to identify trends and desires for reform of the international order and energize public opinion to demand and carry out such reforms at the local and regional levels, ultimately affecting the international order from the grass roots up. The Independent Expert is aware of decades of General Assembly pronouncements on these issues and will be guided by pertinent resolutions, including 61/160, 63/189 and 65/223.

B. Activities of the mandate holder

4. In June 2012 the Independent Expert participated in the workshop he convened on human rights and international solidarity, and in the nineteenth annual meeting of special procedures mandate holders. Both events provided useful insights. During the twentieth session of the Human Rights Council the Independent Expert participated in numerous side events, including the meeting on fighting violence against women through promoting the right to peace, where his intervention focused on the contribution of women in promoting the right to peace, democracy and an equitable order. On 2 July and 3 September he lectured on the scope and potential of the mandate at the University of Geneva and, on 10 July, held a consultation with civil society at the Office of the United Nations High Commissioner for Human Rights (OHCHR). On 27 July the Independent Expert issued a press release calling on States to persevere in negotiations and to adopt a legally binding arms trade treaty to limit and regulate the arms trade. As noted above, in September he is to present his preliminary report at the twenty-first session of the Human Rights Council and in October will participate in the Council's Social Forum on people-centred development and globalization.

5. The Independent Expert has sent questionnaires to States, intergovernmental organizations, national human rights institutions and civil society, seeking their views and requesting assistance in identifying obstacles and good practices. He has received requests from stakeholders concerning areas that require in-depth study. He welcomes information at: ie-internationalorder@ohchr.org.

C. The concepts of democracy and equity

6. The preliminary task of the mandate is a review of the various definitions of the notion of "democracy", which States use with varying content. Internationally the concept entails due respect for the independence and sovereign equality of States and the need to ensure that the international order allows meaningful participation in global decision-making by all States and is not a closed shop governed by a few powerful States intent on imposing their economic and geopolitical priorities. Domestically, the bottom line is that the people (*demos*) in each country should meaningfully influence the policies and practices of Government.

7. Democracy is more than just a political concept; it also has economic, social, anthropological, ethical and religious dimensions. The rule of law is not identical with positivism, but must be animated by Montesquieu's *Esprit des lois* (1748), the existence of an independent judiciary, moderation, a culture of dialogue, negotiation and compromise, and a conviction that in human rights terms there cannot be any "legal black holes". Finally, it should be recalled that the ritual invocation of the word "democracy" does not make it happen. Societies must work in good faith to make it function, ensuring genuine participation by the population. At the same time common sense also tells us to beware of the excesses of "militant democracy", a rather bizarre concept, which in some circumstances may even assume totalitarian overtones, and to abandon the fantasy that democracy can be exported or imposed by force. The respect for national sovereignty mandated in the Charter also means respect for the national identity of countries. The General Assembly has been promoting a more democratic and equitable international order by its pronouncements on self-determination, decolonization, disarmament and the right to peace.

8. Moreover, democracy is not merely a formal State structure or a pro forma holding of elections, but the correlation between the will of the people and the actions of its elected representatives. The will of the people must also be genuine and not the result of populism, demagoguery, manipulation by national or international lobbies and cartels, or distortion through consumerism, intimidation or fear. It should also be kept in mind that although "democracy" is a better form of government than others, it is not a panacea for all the ills of mankind; thus, it is necessary to come to grips with the paradoxes of democracy, of freedom, of the rule of law, of ethical values, etc. Majority rule must not negate minority rights, the right to be different, to practise one's own culture, and to one's individuality and identity. Democracy without equity and without *caritas* can engender human rights violations including extreme poverty and food insecurity. Democracy must always be tempered by a constant awareness of the inherent dignity of the person, by the overarching principle of social justice, bearing in mind that while competition is necessary and useful for material progress, in the absence of a sense of solidarity, competition may become predator behaviour.

9. Whereas every member of the General Assembly has an equal right to vote, and the will of a majority of Governments deserves respect, consideration must also be given to the fact that some States have very large populations and only a single vote, posing a problem of weighting. Moreover, the unequal economic and political power of States may lead to inequitable results, especially when a few powerful States frustrate the expressed will of democratically elected Governments representing hundreds of millions of human beings. A problem of credibility also arises when a large number of General Assembly resolutions remain unimplemented, although adopted by consensus or near unanimity.

10. The Independent Expert acknowledges earlier pronouncements of the General Assembly concerning democracy, e.g. in resolution 55/96 on promoting and consolidating democracy, 57/221 on strengthening the rule of law and 59/201 on enhancing the role of regional,[1] subregional and other organizations and arrangements in promoting and consolidating democracy, as well as resolution 50/172 entitled "Respect for the principles of national sovereignty and non-interference in the internal affairs of States in their electoral processes", in which the Assembly recognized "that there is no single political system or single universal model for electoral processes equally suited to all nations and their peoples, and that political systems and electoral processes are subject to historical, political, cultural and religious factors". Similarly, the Human Rights Council, in its resolution 19/36 on human rights, democracy and the rule of law, reaffirmed in a preambular paragraph that "while democracies share common features, there is no single model of democracy and that democracy does not belong to any country or region", and stressed "the necessity of due respect for sovereignty and the right to self-determination". Thus, it should be clear that the way towards democracy — both nationally and internationally — is arduous and that countries should devise their own democratic institutions and mechanisms consistent with their culture and traditions, but also grounded in universal human rights.

11. The Independent Expert will also explore the practical scope of the concept of "equity", going back to the Socratic notion of moderation and the Aristotelian approach to justice (*Ethics*) as equality of treatment, that is, like cases being treated alike, unlike cases differently. The concept of an equitable international order must also be circumscribed. Surely it cannot mean international charity, or a utopian system based on the doctrine "from each according to his ability, to each according to his needs". The concept does entail international solidarity and an effort to end exploitation, eradicate extreme poverty, abolish privilege, provide fair prices for goods and services, promote development and technology transfer, combat corruption, bribery and unearned commissions, and achieve the Millennium Development Goals. An equitable international order requires that international law be applied and enforced uniformly and not selectively, that violations of human rights be condemned without preferences or privilege, and that sanctions against violators be imposed objectively, taking due care that Governments and not the innocent populations are affected.

12. How can the existing international order evolve so that it will be more democratic and more equitable? Certain conditions appear necessary, foremost among them peace (*Pax optima rerum*) in the holistic sense, encompassing not only the

[1] Cf. Inter-American Democratic Charter, adopted by the General Assembly of the Organization of American States on 11 September 2001.

absence of war but also positive harmony; the absence of structural violence, cultural hegemonism, neocolonialism and discrimination; and the eradication of extreme poverty as envisaged in the Millennium Development Goals. At the request of the Human Rights Council, OHCHR conducted a workshop on 15 and 16 December 2009 in which experts and civil society participated. Its report (A/HRC/14/38) was presented to the Council in June 2010 and led to the adoption of resolution 14/3 in which the Council requested the Advisory Committee to prepare a draft declaration on the right to peace and to report to the Council thereon at its seventeenth session. The Advisory Committee constituted a drafting group and submitted a progress report (A/HRC/17/39 and Corr.1). Pursuant to Council resolution 17/16, the Advisory Committee submitted its draft declaration on the right to peace (A/HRC/20/31, annex) to the Council at its twentieth session in June 2012. The Council considered the draft and adopted resolution 20/15 establishing an open-ended intergovernmental working group to continue the codification process.

D. International democratic order

13. The Independent Expert considers that the right of all peoples to self-determination constitutes a peremptory norm and is binding for all States. It entails the right to independence and freedom from foreign rule or occupation, freedom from economic exploitation as well as permanent sovereignty over natural resources. The right of self-determination is laid down in common article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

14. Hitherto, democracy has been understood primarily in the domestic context. Article 25 of the International Covenant on Civil and Political Rights stipulates that "every citizen shall have the right and the opportunity … to take part in the conduct of public affairs, directly or through freely chosen representatives". The Human Rights Committee, in its general comment No. 25 (1996) on article 25, confirmed that "[it] lies at the core of democratic government based on the consent of the people and in conformity with the principles of the Covenant", and that "[f]reedom of expression, assembly and association are essential conditions for the effective exercise of the right to vote and must be fully protected". Moreover, in addition to article 25, the case law of several States also refers to this principle. However, the implicit existence of a right of all peoples to democracy does not presuppose a prerogative of States to interfere in the domestic affairs of other States. Contrary to some trends and perceptions, the idea of the "responsibility to protect", contained in General Assembly resolution 60/1, the World Summit Outcome, did not replace the Charter-mandated international law of non-interference in the internal affairs of sovereign States. The responsibility to protect is not a *lex specialis* that derogates from Article 2, paragraphs 3, 4 and 7, or any other provision of the Charter. This is all the more true as in 2005 world leaders declared that "[e]ach individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity".[2] The principle of non-intervention remains very much valid and is confirmed in countless resolutions of the General Assembly and the Human Rights Council. Therefore, responsibility to protect must not be abused to circumvent the Charter or engage in sabre-rattling or propaganda for war,

[2] General Assembly resolution 60/1, para. 138.

which is specifically prohibited by article 20 of the International Covenant on Civil and Political Rights. Any intervention in other States must satisfy strictly defined benchmarks and take place only as an *ultima ratio*. In July 2009, the General Assembly revisited the responsibility to protect doctrine, holding a plenary debate on the question. The President of the Assembly identified four benchmark questions that should determine whether and when the system of collective security could implement the responsibility to protect:

(a) Do the rules apply in principle, and is it likely that they will be applied in practice equally to all States, or, in the nature of things, is it more likely that the principle would be applied only by the strong against the weak?;

(b) Will the adoption of the responsibility to protect principle in the practice of collective security be more likely to enhance or undermine respect for international law?;

(c) Is the doctrine of responsibility to protect necessary and, conversely, does it guarantee that States will intervene to prevent another situation like the one that occurred in Rwanda?;

(d) Does the international community have the capacity to enforce accountability upon those who might abuse the right that the responsibility to protect principle would give States to resort to the use of force against other States?

15. In this context, it should be recalled that the Charter of the United Nations imposes certain *erga omnes* obligations on States. One of those obligations is to condemn the illegal use of force and to deny recognition of territorial changes arising from the illegal use of force. While there is an international responsibility to protect, there is, first and foremost, an international responsibility to protect humanity from the scourge of war and, most importantly, to protect humanity from weapons of mass destruction, including nuclear weapons.

16. Whereas international human rights law has traditionally been regarded in terms of States' relations with their inhabitants, the Independent Expert's mandate presupposes addressing the links between an international democratic order and domestic democracy. The Independent Expert is of the view that key elements of democracy — which include, inter alia, equity, participation, the rule of law and an independent judiciary backed up by accountability — are hardly present at the international level. International democracy is often questioned by the ability of some powerful States and non-State actors to subvert the clear will of the majority of the people and States. In this context, an example of what could constitute a form of international democracy is the application of international law as the basis for State conduct, and of the Charter as a world constitution. However, lack of enforcement of international norms, in particular human rights, refugee and humanitarian norms, is a reminder that the conduct of States is not always constrained by international law.

17. While international democracy is not a precondition for the existence of democracy at the national level, there is a need to recognize democracy "as an international principle, applicable to international organizations and to States in their international relations. The principle of international democracy does not only

mean equal or fair representation of States; it also extends to the economic rights and duties of States".[3]

18. Moreover, the right of all peoples to participate in the conduct of public affairs at the national level must also be accompanied by their ability to do so in the international relations of States. In this context, meaningful participation of civil society in the conduct of public international affairs depends on the full realization of domestic democracy. This is particularly relevant as the legitimacy of the foreign actions of States must represent the actual wishes of people, and facilitate the meaningful participation of independent civil society organizations in international decision-making bodies. We are in a unique period of history, when trends and aspirations are coming together. It is not only the social media and the new vistas of information and knowledge that the Internet has opened to civil society; it is a period of liberation from old taboos and empowerment of civil society. The concept of the *indignados*, the Occupy movements in various countries, shows that civil society wants to claim its democratic rights which external factors such as the markets have taken away.

19. International democracy should not be confined only to States Members of the United Nations. Due regard for the principle of self-determination as a peremptory norm of international law must be observed for non-self-governing territories and other unrepresented peoples. In its general comment No. 12 (1984) on self-determination, the Human Rights Committee called it "an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights".

E. Consultations, questionnaires, thematic reports

20. Through early consultations conducted by the Independent Expert and correspondence received from stakeholders, as well as answers to the questionnaires, a number of suggestions for thematic studies emerged: (a) the nature of democracy, its diverging meanings domestically and internationally; (b) the notion of equity; (c) the links between self-determination and democracy; (d) the right of participation of unrepresented peoples; (e) the concept of "participation"; (f) the relationship between democracy and freedom of opinion and expression and access to information (including unduly classified information), peaceful assembly and association, good governance and an independent judiciary; (g) self-censorship and "political correctness"; (h) cartels, lobbies and pressure groups; (i) free, genuine and competitive elections (including issues of election fraud and civil unrest, election financing and buying votes); (j) the impact of the financial markets on democracy and equity; (k) the influence of transnational corporations and other private-sector actors on the international order; (l) the impact of the military-industrial complex, military expenditures and war on democracy and equity, and the need to liberate financial resources to achieve the Millennium Development Goals; (m) the non-implementation of treaties and agreements; (n) control over natural resources; (o) corruption in Government, business and society; and (p) fair trade, free trade agreements and adverse trade relations.

[3] Universal Declaration on Democracy, adopted by the Governing Council (formerly the Inter-Parliamentary Council) of the Inter-Parliamentary Union at its 161st session (Cairo, 16 September 1997), art. 24.

21. In the course of his mandate the Independent Expert shall undertake in-depth studies and submit thematic reports to the Human Rights Council and the General Assembly on these and other topics.

II. Pronouncements of the General Assembly

A. The Charter of the United Nations as world constitution

22. In a very real sense, the Charter of the United Nations can be described as the world constitution. All States are bound by it and should orient their policies and practices according to its purposes and principles. Paramount is the commitment "to save succeeding generations from the scourge of war" through meaningful disarmament and fulfilling the promise to turn swords into ploughshares and end internal and international warfare.

23. The Universal Declaration of Human Rights is an emanation of the Charter and constitutes a minimum standard which must be respected not only by States, but also by individuals.

24. The world financial crisis is a result not only of toxic loans by irresponsible bankers but also of the enormous waste caused by recurrent armed conflicts and by the inordinate proportion of national budgets devoted to the development of all kinds of armaments, including weapons of mass destruction, which threaten the survival of humanity[4] and violate article 6 of the International Covenant on Civil and Political Rights.[5] The Charter also stipulates the promotion of human rights, development and friendly relations based on respect for the principle of equal rights and self-determination of peoples. The application of the Charter is further governed by general principles of law such as equity, good faith, victims' right to reparation, estoppel, and the overarching principles of equality, non-discrimination and the common heritage of mankind.

25. Law, however, is not mathematics, and the mere existence of norms does not ensure their enforcement. Political will and good faith are needed to set up and maintain an appropriate implementation machinery. Thus, the General Assembly has more than a standard-setting function; it also has the practical task of monitoring compliance with the Charter and its own resolutions, establishing enforcement mechanisms, proposing advisory services and technical assistance to States and, if need be, recommending the imposition of sanctions on non-complying States. Admittedly, pronouncements of the General Assembly would not be binding, as are the decisions and resolutions of the Security Council, but States would feel strengthened in their resolve to impose sanctions by relying on the rationale and the legitimacy of General Assembly resolutions justifying their imposition.

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[4] Mikhail Gorbachev, "Resetting the nuclear disarmament agenda", Geneva Lectures Series, 5 October 2009.

[5] Human Rights Committee, general comment No. 14 (1984).

B. Normative framework

26. In his report to the Human Rights Council (A/HRC/21/45)[6] the Independent Expert has elaborated on the normative framework, which is incorporated herein by reference. Particularly relevant to Council resolution 18/6 are several General Assembly resolutions, including: (a) resolution 1514 (XV), Declaration on the Granting of Independence to Colonial Countries and Peoples, which established the principle of self-determination as the foundation of a new world order; (b) resolution 2625 (XXV), Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations; (c) resolution 3201 (S-VI), Declaration on the Establishment of a New International Economic Order; (d) resolution 3202 (S-VI), Programme of Action on the Establishment of a New International Economic Order; (e) resolution 3314 (XXIX), Definition of Aggression; (f) resolution ES-10/15, Advisory opinion of the International Court of Justice on the *Legal consequences of the Construction of a Wall in the Occupied Palestinian Territory*, including East Jerusalem; (g) resolution 65/223, Promotion of a democratic and equitable international order.

27. The Independent Expert will build on the studies already conducted by the Commission on Human Rights, the Subcommission on the Promotion and Protection of Human Rights, the Human Rights Council and its Advisory Committee, as well as on the work of the family of special rapporteurs, General Assembly and Commission on Human Rights resolutions on the right of peoples to peace (Assembly resolution 39/11, Commission resolution 2002/71), and numerous studies of the Subcommission, including the final report of the Special Rapporteur on the human rights dimensions of population transfer, Awn Shawkat Al-Khasawneh (E/CN.4/Sub.2/1997/23 and Corr.1), identifying numerous gross violations of self-determination, democracy and equity inherent in every form of "ethnic cleansing";[7] the final report of the Special Rapporteur on treaties, agreements and other constructive arrangements between States and indigenous persons, Miguel Alfonso Martínez (E/CN.4/Sub.2/1999/20); and the report of the Rapporteur of the drafting group of the Advisory Committee on enhancement of international cooperation in the field of human rights (A/HRC/AC/8/3).

C. Ethical and historical perspective

28. It is appropriate to recall that the objectives of the present mandate reflect aspirations expressed by the leaders of many countries, even before the creation of the United Nations. For instance, United States President Franklin Roosevelt articulated universal hopes in his "Four Freedoms" address of 6 January 1941, notably the freedom from want and the freedom from fear. These principles were confirmed in the eight-point peace plan known as the Atlantic Charter of August 1941, subsequently adhered to by 26 Governments in the Declaration by United Nations of 1 January 1942. The second principle of the Atlantic Charter stipulates that the anti-Hitler coalition "desire to see no territorial changes that do not accord

[6] Forthcoming.

[7] The report was endorsed by the Commission and the Economic and Social Council but never transmitted to the General Assembly for adoption of its conclusions. A. de Zayas, "Forced Population Transfer", in *Max Planck Encyclopedia of Public International Law*, R. Wolfrum, ed., vol. IV (2012), pp. 165-175.

with the freely expressed wishes of the peoples concerned"; the third principle provides that "they respect the right of all peoples to choose the form of government under which they will live"; the fourth principle commits States to promote "the enjoyment by all States, great or small, victor or vanquished, of access, on equal terms, to the trade and to the raw materials of the world which are needed for their economic prosperity"; and the eighth principle reaffirms the need for disarmament.

29. As to freedom from fear, Aung San Suu Kyi expressed it well:

> Within a system which denies the existence of basic human rights, fear tends to be the order of the day. Fear of imprisonment, fear of torture, fear of death, fear of losing friends, family, property or means of livelihood, fear of poverty, fear of isolation, fear of failure. A most insidious form of fear is that which masquerades as common sense or even wisdom, condemning as foolish, reckless, insignificant or futile the small, daily acts of courage, which help to preserve man's self-respect and inherent human dignity. It is not easy for a people conditioned by fear under the iron rule of the principle that might is right to free themselves from the enervating miasma of fear. Yet even under the most crushing state machinery courage rises up again and again, for fear is not the natural state of civilized man.[8]

30. In his book *Indignez-vous!* (*Time for Outrage*), Stéphane Hessel similarly calls for taking responsibility in our hands and demanding change. Such courage is being expressed in many countries by civil society, indignant at the failures of and abuses by Government. For centuries it has been the role of poets and novelists to use literature to promote a more ethical order, from Aristophanes to Ibn Rushd, Erasmus of Rotterdam, Jean Jacques Rousseau, Friedrich von Schiller, Harriet Beecher Stowe, Wilfred Owen, Lu Xun, Anna Akhmatova, Gabriel García Márquez, Vaclav Havel, Arundhati Roy and Wole Soyinka.

III. Complementarity and coordination with other mechanisms

31. The Independent Expert will liaise with Charter-based and treaty-based mechanisms and build on United Nations initiatives such as the Global Compact.[9] He will coordinate his work with that of other United Nations bodies, including the Third Committee of the General Assembly, the Special Committee on Decolonization, the International Law Commission, the Disarmament Commission and the Committee on the Exercise of the Inalienable Rights of the Palestinian People.

32. The United Nations human rights treaty bodies are seized of situations and individual cases on matters related to this mandate and have adopted many pertinent decisions in this respect. Their jurisprudence, in the form of case law,[10] concluding observations and general comments, will enrich the reports of the Independent Expert; he will also rely on recommendations emanating from the universal periodic review and on the work of special procedures.

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[8] Aung San Suu Kyi, "Freedom from fear", acceptance message for the 1990 Sakharov Prize for Freedom of Thought, 1991.

[9] www.unglobalcompact.org/issues/human_rights/Human_Rights_Working_Group.html.

[10] Jakob T. Möller and Alfred de Zayas, *United Nations Human Rights Committee Case Law 1977-2008: A Handbook* (Kehl, Germany, N. P. Engel, 2009).

33. The Independent Expert will follow the progress achieved by the high-level panel of eminent persons to advise the Secretary-General on the post-2015 agenda and will endeavour to liaise with the new Special Adviser to the Secretary-General on Post-2015 Development Planning. Attention will be paid to the programmes established by several United Nations agencies with objectives related to those of this mandate. In the field of labour law, the International Labour Organization (ILO) promotes social justice through standard-setting and monitoring; its motto, *Si vis pacem cole justitiam* (If you desire peace, cultivate justice), could well be the motto of this mandate and report.

34. The World Trade Organization (WTO) has the opportunity to promote a more equitable international order by mainstreaming human rights principles into its policies and programmes, including the Doha Development Agenda, pursuant to its commitment to achieve the agreed objective of rebalancing trade rules so that developing countries can benefit from enhanced equitable commerce. The Independent Expert will study the relevant reports of WTO, the United Nations Conference on Trade and Development (UNCTAD), the World Bank and the International Monetary Fund (IMF) and evaluate criticism by think tanks, academics and civil society.[11]

35. The United Nations Educational, Scientific and Cultural Organization (UNESCO) advances international understanding through culture and is committed to the promotion of world peace, as expressed in the preamble to its Constitution: "[S]ince wars begin in the minds of men, it is in the minds of men that the defences of peace must be constructed". In this spirit, in 1997 UNESCO President Federico Mayor issued a declaration entitled "The Human Right to Peace". Of continued relevance are the UNESCO Culture of Peace Programme and the Declaration and Programme of Action on a Culture of Peace adopted by the General Assembly by its resolution 53/243. On 12 November 1997, the General Conference of UNESCO adopted the Declaration on the Responsibilities of the Present Generations towards Future Generations.

36. The Independent Expert will seek synergies with civil society and intergovernmental initiatives, including those of the Inter-Parliamentary Union, the Alliance of Civilizations, the United Nations Institute for Disarmament Research and regional organizations, which may further contribute to the realization of a more democratic and equitable international order. The Independent Expert will study the report of the thematic debate convened by the President of the General Assembly on 22 March 2012 on fostering cross-cultural understanding for building peaceful and inclusive societies.

37. Civil society initiatives have born fruit, such as the World Campaign on the Human Right to Peace, organized by the Spanish Society for International Human Rights Law (www.aedidh.org), which conducted a four-year worldwide consultation process culminating in December 2010, in Santiago de Compostela, Spain, with the convening, in the context of the World Social Forum on Education for Peace, of the International Congress on the Human Right to Peace. The Congress adopted the Santiago Declaration on the Human Right to Peace, which revised the earlier Luarca

[11] Naomi Klein, *The Shock Doctrine: The Rise of Disaster Capitalism* (Metropolitan Books, 2007).

Declaration[12] in the light of inputs from different cultural sensibilities.[13] The Congress also adopted the Statutes of the International Observatory of the Human Right to Peace, which were endorsed by some 2,000 civil society organizations, as well as numerous public institutions and the 22 States attending the Ibero-American Summit,[14] and which became operative on 10 March 2011.

IV. Obstacles to the realization of an international order that is more democratic and more equitable

38. The Independent Expert is holding consultations with stakeholders to learn what they perceive to be major obstacles and good practices for the realization of an international order that is more democratic and equitable. Focused questionnaires have been addressed to all stakeholders and further questionnaires will be forwarded over the next three years.

39. After informal consultations with permanent missions, intergovernmental organizations and non-governmental organizations, in particular academic communities of several countries, and subsequent study of relevant literature, the Independent Expert has become aware of numerous concerns that require further study, including the postulate of a hierarchy of human rights as one of the remaining ideological debates between developed and developing countries. In his view, civil, political, economic, social and cultural rights are not only interdependent, but they also have equal value and importance.

40. With regard to a more democratic international order, some observers have signalled the need to reform the United Nations and, in particular, the composition of the Security Council so as to make it more responsive to the needs of the 193 States Members of the United Nations. The Open-ended Working Group on the Question of Equitable Representation on and Increase in the Membership of the Security Council and Other Matters Related to the Security Council is exploring the modalities of Security Council reform. In his report entitled "In larger freedom: towards development, security and human rights for all", Secretary-General Kofi Annan proposed an enlargement of the Security Council to 24 members (A/59/2005, paras. 168-170). Such enlargement could theoretically be achieved through amendment of the Charter (Art. 108), provided that the permanent members of the Security Council agree.

41. Other observers have pointed out that the theoretical equality of the Westphalian State system is brought into question by the realities of power politics,

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[12] See Carmen Rosa Rueda Castañón and Carlos Villán Duran, eds., *La Declaración de Luarca sobre el Derecho Humano a la Paz*, 2nd ed. (Granda Siero, Asturias, Spain, Ediciones Madú, 2008); *Contribuciones Regionales para una Declaración Universal del Derecho Humano a la Paz*, Carlos Villán Duran and Carmelo Faleh Pérez, eds. (Luarca, Asturias, Spain, Asociación Española para el Derecho Internacional de los Derechos Humanos, 2010).

[13] *Contribuciones Regionales para una Declaración Universal del Derecho Humano a la Paz*, ibid.

[14] Carlos Villán Durán, "The Human Right to Peace: A Legislative Initiative from the Spanish Civil Society", *Spanish Yearbook of International Law*, vol. 15 (Martinus Nijhoff, 2009), pp. 143-171; Carlos Villán Durán, "Civil Society Organizations' Contribution to the Universal Declaration on the Human Right to Peace", *International Journal on World Peace*, vol. XXVI, No. 4 (December 2011), pp. 59-126; A. de Zayas, "Peace as a Human Right", in A. Eide and others, eds., *Making Peoples Heard* (Martinus Nijhoff, 2011), pp. 27-42.

economic imbalance and adverse trade relationships. Indeed, the overwhelming economic power of some countries renders illusory the aspiration to sovereignty of many poorer countries. In the United Nations votes are often influenced by economic carrot-and-stick practices, and some weaker economies must bend to diplomatic and other forms of pressure.

42. In paragraph 32 of the above-mentioned report the Secretary-General observed:

> In 2005, the development of a global partnership between rich and poor countries ... needs to become a reality. ... Each developing country has primary responsibility for its own development — strengthening governance, combating corruption and putting in place the policies and investments to drive private sector-led growth and maximize domestic resources available to fund national development strategies. Developed countries, on their side, undertake that developing countries which adopt transparent, credible and properly costed development strategies will receive the full support they need, in the form of increased development assistance, a more development-oriented trade system and wider and deeper debt relief. All of this has been promised but not delivered. That failure is measured in the rolls of the dead — and on it are written millions of new names each year.

43. Some observers, like George Soros,[15] have expressed concern at "market fundamentalism", a philosophy that has much in common with social Darwinism and assumes that a laissez-faire policy is always the optimal solution.[16] "Corporatocracy", unfair taxation, uncontrolled markets, currency speculation and runaway finance impact negatively on both democracy and equity.

44. It has long been noted that certain transnational corporations are wealthier and more powerful than some States. Strategies and guidelines must be developed to ensure that international business and trade promote rather than hinder a democratic and equitable international order. The Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, established by the Human Rights Council in its resolution 17/4, is tasked with promoting human rights in this area. The Independent Expert will consult with the members of the Working Group in order to cross-fertilize and avoid duplication.

45. Globalization[17] raises many human rights issues, and it is in the interest of Governments, transnational corporations and civil society that the opportunities offered by globalization be used to advance and not to restrict the enjoyment of human rights. The Independent Expert will explore the impact of globalization on the realization of an international order that is more democratic and more equitable, and how to reconcile the tensions between, on the one hand, the legitimate interest in profit and trade expansion and, on the other hand, the right of States, large and small, to sovereignty, control over their natural resources, and to decide their

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[15] George Soros, *The New Paradigm for Financial Markets: The Credit Crisis of 2008 and What it Means* (Public Affairs, 2008). See also George Soros' interview with Bill Moyers on 10 October 2008, available at www.pbs.org/moyers/journal/10102008/watch.html.

[16] Michael Sandel, *What Money Can't Buy: The Moral Limits of the Markets* (Farrar, Straus and Giroux, 2012).

[17] See Dani Rodrik, *The Globalization Paradox: Democracy and the Future of the World Economy* (W. W. Norton, 2011); Jeffrey Sachs, *The Price of Civilization* (Random House, 2011).

domestic policies for full employment, education, health care and equity, and the right of peoples to self-determination.[18]

46. Military expenditures, the power of the military-industrial complex, the overt and covert trade in weapons and international organized crime, in particular drug trafficking, money-laundering and corruption of Government officials and non-State actors, continue to have a deleterious effect on the proper functioning of democracy in many countries. The independent Expert deplores the failure of States to adopt a landmark United Nations arms trade treaty in July 2012, which would have regulated an industry valued at more than $60 billion. Further talks and a General Assembly vote endorsing the draft arms trade treaty are urgently needed. The impact of the "war on drugs" and the "war on terror" on the rule of law also deserves close attention. The killing and harassment of journalists, reprisals against human rights defenders, censorship and deliberate disinformation by Government and private-sector media frustrate the democratic goal of empowering the population to develop responsible opinions upon which to act in the political arena. Frequently, news reporting and commentary avoid the crucial issues and distract attention with red herrings of all kinds. Observers have noted that all too often the crucial issues are ignored. Such practices undermine democracy.

47. Concern has been expressed about the role of religious institutions in the conduct of public affairs. The Independent Expert would like to explore how religious institutions can also contribute to a more democratic and equitable international order, as well as to greater democracy and equity domestically.

48. The International Expert considers that the emergence of a democratic international order would be advanced by the participation of the growing number of States that are implementing democratic principles domestically.

49. From the domestic perspective, obstacles to the promotion of a more democratic international order include a lack of correlation between the will of the people and the policies and practices adopted by their Governments — even democratically elected Governments — and reflect an epistemological and perception gap between the governing elites and the population at large. This lack of correlation may be attributable in part to the "psychology" of power, but also to the deliberate distortion or manipulation of public opinion.[19]

50. It is generally recognized that a well-informed civil society is a condition of democracy. A country where public opinion is manipulated by the Government or private media cannot have a functioning democracy. Censorship, whether conducted by States or by press conglomerates, distorts reality and undermines democracy. Who is financing the media and what gets printed are important issues in understanding the degree of press freedom and to what extent big media smother the independent press. Self-censorship as a result of intimidation or social pressures, sometimes referred to as "political correctness", constitutes a serious obstacle to the proper functioning of democracy. It is important to hear the views of all persons,

[18] *Recreating Democracy in a Globalized State*, Cliff Durand and Steve Martinot, eds. (Clarity Press, 2012); Noam Chomsky, *Profit over People: Neoliberalism and Global Order* (Seven Stories Press, 1999).

[19] Tzvetan Todorov, *Les ennemis intimes de la démocratie* (Paris, Robert Lafont, 2012); Edward Herman and Noam Chomsky, *Manufacturing Consent: The Political Economy of the Mass Media* (Pantheon, 2002).

including the "silent majority", and to give heed to the weaker voices. There is little hope for an international democratic order as long as democracy is lacking at the national level. Therefore, it is imperative to focus attention on education and access to information, including via the Internet, to enable people to freely develop their own opinions. Direct or indirect censorship, whether through State or private-sector agencies, undermines opinion-building and constitutes an obstacle for the individual and the society at large to exercise civic responsibilities, including the right to participate in the conduct of public affairs.

51. Paragraphs 2 and 3 of general comment No. 34 (2011) of the Human Rights Committee state:

> Freedom of opinion and freedom of expression are indispensable conditions for the full development of the person. They are essential for any society. They constitute the foundation stone for every free and democratic society. The two freedoms are closely related, with freedom of expression providing the vehicle for the exchange and development of opinions.
>
> Freedom of expression is a necessary condition for the realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights.

Some pressure groups, lobbies and professional public relations companies may hijack political decision-making and leave large parts of the population effectively disenfranchised.

52. While the outward face of democracy may be a multiparty system and regular elections, some observers contend that there is a substantial difference between the right to vote and the right to choose policies. If the choice of candidates for election does not correspond to the desires of the people, then a pro forma election among candidates who have been put up by political machines does not further the credibility or legitimacy of such democracies. This is not democracy but "partitocracy".[20] If the only choices are between candidates A and B, whose programmes are often very similar, the electorate does not have a real voice and the election does not satisfy the essence of what democratic government must be. (In such cases, the two-party system shows itself to be twice as democratic as the one-party system.) True democracy requires real choices as well as transparent and accountable governance and administration in all sectors of society. In other cases party machines fail to advance a representative number of female candidates. Citizens have a right to be given greater opportunity to participate in the conduct of public affairs, particularly by general consultations through referendums on issues, not merely by voting for individuals whose loyalties are not always with their electorates but, more often than not, with the rich sponsors who finance their political campaigns. In this context, many observers have noted that election campaigns in many countries entail enormous expenditures and that the choice of candidates is frequently dependent on their financial strength, resulting in a kind of elitist "elective dictatorship" or plutocracy, manifesting a disconnect between the people and the exercise of political power.

53. Obstacles of a more general nature are the historical inequities left by centuries of slavery, colonialism, imperialism and foreign occupation (which persist

[20] See the work of the Italian political scientist Giovanni Sartori.

in some areas even today).[21] It is obvious that those persons and countries that enjoy privileges have an interest in maintaining the status quo and are reluctant to relinquish their advantages. Another general obstacle is the obsolete and self-righteous "clash of civilizations"[22] mentality, which is incompatible with international solidarity and must not be allowed to become a self-fulfilling prophecy.

54. Other generic obstacles include lack of ethics,[23] endemic power asymmetries, racism, taboos, "conspiracies of silence", "political correctness", self-censorship, lack of transparency (particularly in the financial sector), lack of accountability, abuse of rights, selectivity, lack of objectivity, double standards, international law à la carte, unilateral measures, discrimination among victims, intellectual dishonesty, political hubris and common greed.

55. Aware that the status quo itself hampers the realization of an international order that is more democratic and equitable, the Independent Expert intends to explore ways and means of overcoming these obstacles. The dynamics of economic power must change if progress and a more inclusive and balanced growth paradigm are to be achieved.

56. The Independent Exper; believes that the process of establishing a democratic and equitable international order is not likely to move ahead as long as Governments are not truly representative of their constituencies, and as long as economic exploitation, colonization and neo-colonization continue and territories continue to be occupied for strategic, military or economic purposes.

57. There is much room — as well as need — for improvement. States, the United Nations, intergovernmental organizations, non-governmental organizations and civil society all need to identify and overcome obstacles in their respective areas of competence and influence. This is required by a post-Charter international order that is based on a post-predator world consensus.

58. We need a renewed commitment to the Charter as the constitution of the modern world. We need to discover where, why and how the purposes and principles of the United Nations have been or are being eroded; what incremental norms and practices have been frustrating the realization of the goals of the United Nations. For this mandate, the rigorous respect of Articles 1 and 2 of the Charter is of paramount importance, bearing in mind that certain events and practices of the

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[21] Eduardo Galeano, *Open Veins of Latin America: Five Centuries of the Pillage of a Continent* (Monthly Review Press, 1997). Cf. case law of the Human Rights Committee on indigenous matters, e.g., *Ominayak, Chief of the Lubicon Lake Band*, v. *Canada*: "Historical inequities, to which the State party refers, and certain more recent developments threaten the way of life and culture of the Lubicon Lake Band, and constitute a violation of article 27 [of the International Covenant on Civil and Political Rights] so long as they continue." (A/45/40, vol. II, annex IX.A, para. 33); Möller and de Zayas, p. 447. Nancy Fraser, "Egalité, identités et justice sociale", *Le Monde diplomatique*, June 2012, p. 3.

[22] Samuel Huntington, *The Clash of Civilizations and the Remaking of World Order* (Simon & Schuster, 1998).

[23] A. de Zayas "Normes morales et normes juridiques: Concurrence ou conciliation" in A. Millet-Devalle, ed., *Religions et droit international humanitaire* (Paris, Pedone, 2008), pp. 81-87 and *Handbook of Social Justice in Education*, William Ayers, ed. (Routledge, 2008). Cf. the analysis of "democracy" and "value" in China by Harro von Senger, "'Wert' in China", in *Value: Sources and Readings on a Key Concept of the Globalized World*, Ivo de Gennaro, ed. (Leiden, 2012), pp. 399-414.

recent past have brought the relevance of the United Nations into question. It is for the General Assembly to exercise its responsibility towards the world and reclaim leadership in asserting the values that underlie the Charter, first and foremost the imperative to work untiringly to prevent any kind of armed conflict, to end ongoing wars, to rebuild the peace and to maintain it.

V. Good practices and promising trends

59. At the present stage, the Independent Expert has not yet developed benchmarks to assess, measure and compare what qualitatively could be considered "best practices". He will further consult stakeholders in this respect.

60. As a democratic international order demands well-functioning inter-action between the democratic will of peoples and the concrete policies that affect them, an equitable international order requires a correlation between production and wealth, performance and reward, and rejects the excesses of the uncontrolled financial markets that more than once have adversely impacted the world economy, causing hardships such as unemployment and loss of the savings and pensions of millions of people. In the light of the persistence of extreme poverty in the world, including in developed countries, exorbitant salaries and bonuses as well as currency speculation constitute unethical practices. Efforts in many countries to regulate the financial markets are commendable but risk remaining insufficient.

61. Any progress in the fields of codification, monitoring and enforcement of human rights is welcome, even if achieved by homeopathic doses. In her report on the strengthening of the human rights treaty bodies (see A/66/860), the High Commissioner for Human Rights welcomed increased ratification of the core human rights treaties. The goal is universal ratification, accompanied by education so that greater awareness of human rights permeates Government and society in a sustainable manner.

62. With respect to a democratic international order, the Independent Expert values the progress achieved in the empowerment of women in many countries, the greater transparency shown in elections and the added value of election monitoring by many actors. As stated earlier, a democratic international order is best secured by a growing universal acceptance of democratic principles as reflected in a growing number of democratic States and by the constant improvement of democratic institutions. Democracy also requires an informed population that can articulate its wishes and can choose among policies in periodic elections and by referendums. A democratic international order requires greater transparency and respect for the needs and aspirations of peoples in all regions of the world, regardless of economic power or geopolitical strategic importance, giving due regard to national sovereignty and the right of self-determination.

63. The Independent Expert is studying the democratic traditions of many countries and practices of popular initiatives, referendums, recall and impeachment.

He intends to explore the feasibility of using aspects of the "direct democracy"[24] model more broadly, which would give populations opportunity to choose among policies and not only candidates. It should be remembered that the right to vote is not identical with the right to choose. The pros and cons of giving civil society the right to initiate legislation by petition, which could be put to a general vote if a certain number of signatures are gathered, and the possibility of referendums on legislation being considered or already adopted will be explored. Combining aspects of direct democracy and representative democracy would perhaps prove to be appropriate for some countries.

64. Among practices to be studied are enhanced press freedom, access to the Internet worldwide, regular elections and election monitoring. Current developments in the social media may contribute insights. At the fall 2011 session of the United Nations Chief Executives Board for Coordination, the High Commissioner for Human Rights said in her statement, entitled "The Tunis imperative", that "human rights, democracy and the rule of law are as much a part of the UN brand as peacekeeping and development assistance". Before the Human Rights Council at its nineteenth session, she said:

> Much of this historic period has been marked by public demands of people to live a life of dignity and enjoyment of human rights. Although most striking in several countries of the Arab region where we have seen tens of thousands of women, men and young people take to the streets to voice their claims, popular movements denouncing exclusion, inequality, discrimination, absence of genuine political participation and lack of economic and social rights have emerged on all continents, as people have shown themselves unwilling to accept impunity and lack of accountability for the actions of Governments, international institutions and the transnational and national private sectors. People are demanding freedom: freedom from fear, and freedom from want. They are demanding respect of the rule of law — including in the economic sphere — and full participation in decisions that affect their lives.

65. With regard to an international order that shall be more equitable, the Independent Expert commends those countries that have met their commitments under the United Nations Millennium Declaration, in particular the Millennium Development Goals, as well as progress achieved in technology transfer and access to medical services and drugs. Foreign investment is necessary in developing countries, provided that the profits therefrom are equitably shared. Praiseworthy too is the growing consciousness that the products we buy at the grocery store or elsewhere should come from equitable production and trade, as illustrated by the growing popularity of fair trade coffee, flowers and other products.

66. Women's peace movements have raised major issues on war and conflict situations. Without doubt, these movements to wage peace have made historical inroads in impacting public opinion and are reflected in Security Council resolutions

[24] Johannes Reich, "An Interactional Model of Direct Democracy — Lessons from the Swiss Experience", 5 June 2008. Available at: http://ssrn.com/abstract=1154019; *Deliberative Democracy*, Jon Elste, ed. (Cambridge University Press, 1998); Carne Ross, *The Leaderless Revolution: How Ordinary People Will Take Power and Change Politics in the 21st Century* (Blue Rider Press, 2012); Takis Fotopoulos, *Towards an Inclusive Democracy: The Crisis of the Growth Economy and the Need for a New Liberatory Project* (Continuum, 1998).

1325 (2000), 1820 (2008), 1888 (2009) and 1889 (2009), bringing a gender perspective into peace negotiations.

67. The Independent Expert is aware of State and private-sector programmes of cultural cooperation and mutual improvement of school textbooks and curricula, and has himself participated in such efforts. Textbooks should mainstream human rights and democratic values and eliminate stereotypes.

68. Among good practices in the United Nations system the Independent Expert will study the successes of OHCHR in providing advisory services and technical assistance to countries in transition to democracy, and the operation of the ILO tripartite system in achieving more equitable labour conditions worldwide. At the United Nations Conference on Sustainable Development (Rio+20), the participating States committed themselves to a "green economy", adopting an outcome document, "The future we want", aiming at sustainable development.

69. The Independent Expert will study the fruits of the universal periodic review, which is one step towards achieving an international democratic order through dialogue among stakeholders. The Governments-United Nations-civil society triangle should be further developed. Without a doubt, individuals and peoples have emerged as interlocutors of Governments and agencies. As Theo van Boven emphasized, "people matter".[25]

VI. Moving forward

70. A preliminary report cannot advance conclusions or formulate recommendations. These are but working hypotheses that must still be tested in the course of the coming years. The Independent Expert looks forward to receiving and analysing feedback from stakeholders, think tanks and universities. He recognizes that in order to advance in the realization of an international order that is more democratic and more equitable, a change in prevailing ways of thinking and behaviour is necessary; a semantic reformation may even be undertaken, since words are powerful weapons that often perpetuate prejudice and injustice. Moreover, positivism must be tempered by anthropological, social and cultural considerations. Building a culture of equity requires recognition that we all have the same human dignity and rights, i.e., that privileges must be phased out. Although equity is common sense, based on the conviction that we all share an aspiration to happiness, education is necessary to unlearn privilege, unlearn exclusion, unlearn discrimination, unlearn prejudice, unlearn war. This is possible, as the work of UNESCO demonstrates. A new human rights paradigm should replace the artificial division of human rights into first, second and third generation rights, with its inherent value judgement that is both obsolete and misleading. A new paradigm of rights could be envisioned: enabling rights (peace, food, homeland, development), immanent rights (equality, due process) and end rights (identity, the right to achieve one's potential). The time is ripe for this change of perspective about rights. It must be accepted that the essence of a "right" is not merely its formal codification in legislation, nor its justiciability, i.e., whether it

[25] T. van Boven, *People Matter: Views on International Human Rights Policy* (Amsterdam, Meulenhoff, 1982).

can readily be claimed before a judge, but rather whether there is an objective justification for that right; whether public policy (*ordre public*) requires it. While many of the so-called third-generation rights (peace, a clean environment) are more difficult to render justiciable, they are nonetheless essential entitlements of the human being. Therefore, the test must be whether the right emanates from the higher concept of human dignity, i.e., whether it is inherent in or serves human dignity. Only then does the pragmatic issue arise of how to put that right into law and practice; how it can be concretely implemented by legislation or regulations.

71. **The Independent Expert encourages the open-ended working group of the Human Rights Council to advance towards the adoption of a declaration on the human right to peace so that the General Assembly can proclaim it. It is crucial to reaffirm the continued validity of the Charter of the United Nations and the illegality of sabre-rattling and other threats or use of force.**

72. **With regard to an international order that should be more democratic, the Independent Expert is aware of the frequent disconnect between people and Government and the dysfunctions prevalent in many countries, both in Government and within civil society itself. States and civil societies are invited to review the degree of correlation between the will of the people and the policies actually implemented. A responsible electorate should enjoy the opportunity to peacefully articulate approval or disapproval of Government policies, without intimidation or fear. Independent national human rights institutions, or other non-governmental agencies, could undertake the task of measuring the level of correlation through periodic polling and make corrective recommendations to parliaments. On the global scale, an appropriate organization or agency could "take the temperature" of world public opinion. Supplementing the General Assembly, which is composed of Government representatives, other mechanisms could be devised to allow civil society in all countries to articulate their views, which in some cases may differ from those expressed in the Assembly by Government representatives. Moreover, the feasibility of global public opinion polling, through the Internet or an aggregate societal platform, on issues such as peace, the environment and the common heritage of mankind should be explored. Such opinion polls would not have binding force, but would facilitate a better overview of popular will in all regions of the world.**

73. **With regard to a more equitable international order, the economic dynamics that make the rich richer and the poor poorer must be changed. This may entail, among other things, the cancelling of the debts of many developing countries. The Bretton Woods institutions have paramount responsibility in this regard.**

74. **Bearing in mind that "the market" is not an invention of capitalism but that it has existed for thousands of years in many different societies, social justice logically requires that the profits resulting from the operation of markets and infrastructures created by society be equitably shared within societies and in a larger context within the human family. In order to achieve equity, other measures of affirmative action must be considered. National human rights institutions could perhaps make pertinent proposals. Governments are thus invited to consider what strategies could be most**

conducive to progress, and civil society should help their Government devise such strategies. Ultimately, this is in the interest of all peoples in all countries.

75. **On 14 May 2012, the special procedures mandates on extreme poverty, food, transnational corporations and other business enterprises, foreign debt and international solidarity proposed the imposition of a global financial transaction tax aimed at offsetting the costs of the enduring economic, financial, fuel, climate and food crises and to protect basic human rights.[26] Moreover, a special tax on all sales of military aircraft, navy vessels, cruise missiles and other weapons could be considered. Progress on disarmament negotiations is always welcome. Lip service to disarmament is insufficient; the goal is to find ways to redirect the resources used for the military and reduce the danger of war while liberating funds to finance development and all-inclusive growth.**

76. **Advisory services and technical assistance may be necessary to assist States in drafting legislation and implementation mechanisms to promote democracy and equity in their own societies. The Office of the High Commissioner for Human Rights can assist countries in the drafting of laws and enabling legislation so as to ensure the enforcement and follow-up of international commitments, including decisions of international courts and tribunals. Moreover, the establishment of a world court on human rights could be envisaged,[27] a project much discussed in the context of the sixtieth anniversary of the Universal Declaration of Human Rights[28] and endorsed by the Government of Switzerland in its initiative "An agenda for human rights".**

77. **Regional economic cooperation through, for example, the Association of Southeast Asian Nations, the African Union, the European Union, the Organization of American States, the Community of Latin American and Caribbean States, as well as subregional initiatives such as the Common Market of the South (MERCOSUR) or the Union of South American Nations (UNASUR), should be enhanced, with the support of regional human rights institutions. Moreover, the proactive participation of world religions and philosophies in promoting an international order that is more democratic and equitable should be encouraged. Vast human resources of goodwill, optimism, enthusiasm and belief in the future must be tapped.**

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[26] www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12150&LangID=E.

[27] See, for example, the written statement submitted by the International Society for Human Rights to the Human Rights Council on an international bill of rights and world court of human rights (A/HRC/19/NGO/124); the website of the International Bill of Rights Association (www.internationalbillofrights.org); J. Kirk Boyd, *2048: Humanity's Agreement to Live Together* (Berkeley, California, Berrett-Koehler Publishers, 2011); Manfred Nowak, "The Need for a World Court of Human Rights", *Human Rights Law Review*, vol. 7, No. 1 (2007), pp. 251-259.

[28] Julia Kozma, Manfred Nowa and Martin Scheinin, *A World Court of Human Rights: Consolidated Statute and Commentary* (Vienna, Neuer Wissenschaftslicher Verlag, 2010). In November 2009, a conference on this issue was hosted at the Law School of the University of California at Berkeley with the participation of the first United Nations High Commissioner for Human Rights, José Ayala-Lasso, the former Acting High Commissioner for Human Rights, Bertrand Ramcharan, Manfred Nowak, Ted Meron, David Caron, Kirk Boyd, Bruna Molina, Alfred de Zayas and many academics and members of civil society. Several follow-up side events have also been held at the sessions of the Human Rights Council. See www.internationalbillofrights.com.

78. **As all human rights derive from human dignity, it is important to recognize that human dignity is not a product of positivism but an expression of natural law and human rationality. Although an abstract concept, human dignity has engendered concrete norms of human rights, a practical *mode d'emploi* strengthened by enforcement mechanisms. Whereas this mandate may also appear abstract, it aims at formulating a pragmatic *mode d'emploi* to overcome and remedy obstacles. Bearing in mind that the authority of the United Nations has been and is being challenged, it is important to reaffirm the purposes and principles of the Charter and the role of the General Assembly as the pre-eminent forum to negotiate and build a democratic and equitable international order and ensure social and people-centred sustainable development, giving greater voice to civil societies around the planet.**

79. **Governments and civil society can best advance a democratic and equitable international order by acknowledging that the Charter of the United Nations is the world constitution, based on a vision of justice and human dignity. A better world is indeed possible if all honour that constitution, defend it and, where necessary, undertake constructive reform to address today's needs and give concrete application to its purposes and principles in larger freedom.**